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Atty Dkt No. GP-303547 (GM0424PUS)

Remarks

Claims 1-13 are pending. Claims 1-13 are rejected under 35 U.S.C. § 102(b) as being anticipated by Hertzell (3,718,357). The Examiner also appears to reject claims 6-10 under 35 U.S.C. § 102(b) as being anticipated by Farkash (6,406,045). The Examiner also appears to reject claims 11-13 as being anticipated by Whitfield (5,333,923). Applicants respectfully request reconsideration of the rejections in view of this reply.

Rejection of claims 1-13 under 35 USC § 102(b) as being anticipated by Hertzell

For a rejection to be proper as an anticipation under 35 U.S.C. § 102, every element and limitation found in the rejected claim must be found in the § 102 reference. "A claim is anticipated **only if each and every** element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). See MPEP §2131.

Claim 1 recites "a base member ... having a base member stepping surface; and at least one movable member being selectively repositionable with respect to the base member such that the length of the step assembly is selectively variable, said at least one movable member having a movable member stepping surface." (emphasis added). Applicants submit that the rejection of claim 1 as being anticipated by Hertzell is improper because Hertzell does not describe, either expressly or inherently, each and every element and limitation recited by claim 1.

More specifically, claim 1 recites "a base member" and a "movable member being selectively repositionable with respect to the base member such that the length of the step assembly is selectively variable." However, Hertzell does not disclose that the length of bumper guard assembly 60 is selectively variable. Although the width of the bumper guard assembly 60 of Hertzell may be selectively variable, it is clear that the length of bumper guard assembly 60 is not selectively variable.

Webster's New Universal Unabridged Dictionary (1996) provides the following relevant definitions for "length": "the longest extent of anything as measured from end to end";

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and "the measure of the greatest dimension of a plane or solid figure." It is apparent from the foregoing definitions that the length of the bumper guard assembly, i.e., the measure of the greatest dimension of the bumper guard assembly, is not selectively variable. Accordingly, Hertzell does not anticipate claim 1.

Applicants note that this distinction results in a significant functional difference between Hertzell and the invention of claim 1, i.e., the step assembly of the invention enables selective fore/aft placement of a surface suitable for stepping, as opposed to prior art step assemblies in which a running board is moved inboard or upward with respect to the vehicle body. See paragraph 0004 of the present application.

Furthermore, it is unclear which member of Hertzell constitutes a "base member ... having a base member stepping surface," as recited by claim 1. In rejecting claim 1 as being anticipated by Hertzell, the Examiner states that "Hertzell teaches ... a base member ... having a base member stepping surface (see figure 1, element 60)." However, element 60 of Hertzell is a "bumper guard assembly" that includes multiple components, none of which appear to Applicants to be a "base member ... having a base member stepping surface."

Claims 2-5 ultimately depend from claim 1 and therefore are not anticipated by Hertzell for at least the same reasons that claim 1 is not anticipated by Hertzell.

Claim 6 recites, *inter alia*, "at least one movable member defining a movable member stepping surface and being selectively repositionable fore and aft with respect to the vehicle body." (emphasis added). Applicants note that no part of the bumper guard assembly of Hertzell is selectively repositionable fore and aft with respect to the vehicle body, and therefore claim 6 is not anticipated by Hertzell. Hertzell may describe members 64 and 65 as being movable inboard and outboard with respect to a vehicle body, but not fore and aft. Claims 7-12 ultimately depend from claim 6 and therefore are not anticipated by Hertzell for at least the same reasons that claim 6 is not anticipated by Hertzell.

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Claim 13 similarly recites "first and second movable members ...being operatively engaged with the track for translation fore and aft with respect to the vehicle body." (emphasis added). Accordingly, the analysis presented for claim 6 also applies to claim 13, and Applicants submit that claim 13 is not anticipated by Hertzell.

Rejection of claims 6-10 under 35 USC § 102(b) as being anticipated by Farkash

Claim 6 recites "a base member defining a base member stepping surface, and at least one movable member defining a movable member stepping surface and being selectively repositionable fore and aft with respect to the vehicle body." (emphasis added).

Applicants submit that the rejection of claim 6 as being anticipated by Farkash is improper for at least two reasons, namely (1) element 26 of Farkash does not define a "stepping surface"; and (2) even assuming, *arguendo*, that element 52 of Farkash defines a "stepping surface," it is not selectively repositionable "fore and aft with respect to the vehicle body," as recited by claim 6.

With respect to the first of the aforementioned reasons, the Examiner states that "Farkash ... teaches ... a step assembly ... including a base member defining a base member stepping surface (see fig 5, element 26)." However, element 26 of Farkash is an "L-shaped bracket" that is mounted under the vehicle body 12, and is clearly not accessible by a person as a step, as shown in Figure 5; therefore bracket 26 does not define a "base member stepping surface," as recited by claim 6. Accordingly, claim 6 is not anticipated by Farkash.

With respect to the second of the aforementioned reasons, the Examiner states that "Farkash ... teaches ... a step assembly ... including ... one movable [sic] defining a movable member stepping surface (see fig 6, element 52) and being selectively repositionable ... such that the length of the step assembly is selectively variable (see figure 6)." Applicants note that the Examiner does not address the limitation recited by claim 6 that the movable member defining a stepping surface is selectively repositionable fore and aft. It is apparent from Figures 1 and 5-6 of Farkash that, although drawer 52 may move transversely with respect to the vehicle body 12, drawer 52 of Farkash is not movable fore and aft. Accordingly, claim 6 is not

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anticipated by Farkash. Applicants note that claim 6 has been broadened by the deletion of the limitation, "such that the length of the step assembly is selectively variable."

Claims 7-10 ultimately depend from claim 6 and therefore are not anticipated by Farkash for at least the same reasons that claim 6 is not anticipated by Farkash.

Rejection of claims 11-13 under 35 USC § 102(b) as being anticipated by Whitfield

Claims 11 and 12 depend from claim 6, which recites that "at least one movable member defin[es] a movable member stepping surface." (emphasis added). Claim 13 similarly recites "first and second movable members each having a ... stepping surface." (emphasis added).

Applicants note that a "stepping surface" is defined in paragraph 0005 of the present application, which recites "stepping surface, i.e., a surface on which a vehicle user may step to elevate himself or herself." Nowhere does Whitfield describe a surface of telescoping sections 12a of rod 12 as being a stepping surface. Rather, telescoping sections 12a of rod 12 are part of a "side body vehicle protector" (Whitfield, column 2, lines 51-52) that is configured to protect vehicle doors from damage incurred by the door of another vehicle (Whitfield, column 1, lines 11 et seq.). Furthermore, there is no teaching that the telescoping rod 12 could support the weight of a person for use as a stepping surface. Accordingly, Applicants submit that claims 11, 12, and 13 are not anticipated by Whitfield.

Furthermore, claim 13 recites that "the first movable member is translatable between a stowed position in which the first movable member does not extend rearward of ... the rear wheel, and an extended position in which the first movable member extends rearward of ... the rear wheel." In the reproduction of Whitfield's Figure 1 in the Office Action mailed June 14, 2005, the Examiner labels the forwardmost telescoping section a "first movable member." It is apparent from Figure 1 that the section labeled "first movable member" is shown in an extended position and does not extend rearward of any portion of the rear wheel. In contrast, claim 13 recites "the first movable member is translatable between a stowed position ... and an extended

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position in which the first movable member extends rearward of ... the rear wheel."

Accordingly, claim 13 is not anticipated by Whitfield.

New claims 14 and 15

Antecedent support for the limitations of new claim 14 is found in paragraph 0019 of the present application, which recites that "[t]he step assembly 10 is situated at a height between the ground and the front and rear doors 76, 80." Support is also found in Figures 3 and 4 of the present application. Claim 14 depends from claim 6 and is therefore allowable for at least the same reasons provided above with respect to claim 6.

Antecedent support for the limitations of new claim 15 is found in paragraph 0019 of the present application, which recites that "[t]he elongated portion 18 of the base member does not extend significantly forward of the front door 76, and does not extend significantly rearward of the rear door 80." Support is also found in Figures 3 and 4 of the present application. Claim 15 depends from claim 6 and is therefore allowable for at least the same reasons provided above with respect to claim 6.

CONCLUSION

This Amendment is believed to be fully responsive to the Office Action mailed June 14, 2005. The remarks in support of the rejected claims are believed to place this application in condition for allowance, which action is respectfully requested.

Respectfully submitted,

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